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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,881	09/08/2003	Augusto D. Hernandez	08215-549001 / P06-026886	8107
26171 7590 10/08/2008 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER SMITH, RICHARD A	
			ART UNIT 2841	PAPER NUMBER
			NOTIFICATION DATE 10/08/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/656,881	<b>Applicant(s)</b> HERNANDEZ ET AL.	
	<b>Examiner</b> R. Alexander Smith	<b>Art Unit</b> 2841	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/R. A. Smith/  
 Primary Examiner  
 Art Unit: 2841

Continuation of 11. does NOT place the application in condition for allowance because:

With respect to the argument in the spanning pages 7-8 regarding Simpson not teaching a cover of any sort or a polymer housing: This argument is not persuasive since Simpson was not relied upon for a teaching of a cover and its associated features as claimed or for a polymer housing. Simpson's teaching is drawn to an indicator and its particular type of drive mechanism in order to eliminate hysteresis and improve mechanical movement. Please note the discussions to the housing are limited to column 3 lines 4-6 and 22-24, and column 4 lines 67-71.

Furthermore, older patents rarely disclose details which would have been considered as obvious to one of ordinary skill in the art, particularly when the details were not directly addressing the invention that was claimed. Simpson was addressing an indicator mechanism to improve the accuracy thereof as stated above and this is where Simpson provided details.

With respect to Norwood '952 and the controller as argued on pages 8-9: The argument involving the controller having its internals protected by a sealed circuit housing or module 112 within the housing 110 is noted. Norwood does address the reason for this in column 3 lines 56-60, i.e., the failure of many operators to close and seal the boxes following routine adjustment and inspection. However Norwood '952 was not relied upon in the applied rejection for the teaching of its internals, but was relied upon for the teaching of a housing 110, a hinged front cover 116 with latch and a seal between the housing and the cover.

With respect to Norwood '952, the sun rays and the shielding of the liquid crystal readout being rendered unsatisfactory by a one-piece clear polymer cover as argued on page 9 and also with respect to Albanese III as argued on page 9: The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case the applicant is arguing Norwood '952 as modified by Albanese and how it would affect Norwood '952. If that were the applied rejection then the examiner would agree; however, the rejection is based on Simpson, Jr. et al. in view of Norwood '952 and Albanese III. Therefore Simpson, Jr. et al. as modified by Norwood '952 and Albanese III would not have the liquid crystal readout.

With respect to Simpson, Jr. et al. and such a modification would require a substantial redesign of Simpson's indicator as argued from the bottom of page 9 through page 10: The examiner disagrees. Simpson's teaching is drawn to an indicator and its particular type of drive mechanism in order to eliminate hysteresis and improve mechanical movement. The discussion involving the housing is limited to column 3 lines 4-6 and 22-24, and column 4 lines 67-71. The change to the housing as applied in the rejection would not affect or change the drive mechanism taught by Simpson, Jr.

With respect to Albanese III and claim 29 as argued at the bottom of page 10: This argument is not persuasive since Albanese was not used for the teaching of multiple access points for the cover. Norwood '952 was used the teaching of a single access point and Albanese III was used for the teaching of a cover being one piece and transparent.

With respect to Simpson, Norwood '617 and Albanese III and argument against making the cover clear given the keypad and display are only accessible once open as argued on pages 11 12: The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case the applicant is arguing Norwood '617 as modified by Albanese and how it would affect Norwood '617. However, the rejection is based on Simpson, Jr. et al. in view of Norwood '617 and Albanese III. Therefore Simpson, Jr. et al. as modified by Norwood '617 and Albanese III would not need to be open to access a keypad, and it appears to the examiner that it would have been obvious to one of ordinary skill in the art to make the cover as a clear cover so that the user can read the indicator of Simpson without having to open the cover.